IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/11/2003

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

C.M.S.A.No.4 of 2002

Palanivelu .. Appellant

-Vs-

Meenakumari .. Respondent

PRAYER: Against the order and decreetal order dated 2.8.2001 made in A.S.No.17 of 2001 on the file of the Principal District Court, Nagapattinam, confirming the order and decreetal order dated 4.8.2000 made in H.M.O.P.No.30 of 1999 on the file of the Principal Subordinate Court, Myladuthurai.

!For Appellant : Mr.Amarnath
for Mr.Srinath Sridevan

^For Resondent : No appearance

:JUDGMENT

The appellant is the husband who laid H.M.O.P.No.30 OF 1999 on the file of Principal Subordinate Court, Myladuthurai, to divorce the respondent/wife on the ground of cruelty said to have been caused by the wife.

2. According to the appellant/husband, the respondent/wife was very aggressive at the nuptial night, was behaving very rudely against the appellant/husband, was questioning his black complexion, and was pleading for a separate residence. The appellant/husband further submits that the respondent/wife attempted to cut his forearm, attempted to murder him by pressing his face with pillows, threatened to commit suicide, and also created an ugly and unpleasant scene in the work spot, which amounts mental cruelty.

3. The respondent/wife resisted the petition denying all the abovesaid allegations and expressing that she is ready and willing to join with the appellant/husband to live peacefully.

4. The appellant examined his brother (P.W.2) to substantiate his case. P.W.2 deposed that his sister-in-law, the respondent herein, does not do any household duties, she has no cordial relations with his mother, sister and other relatives, and that she left the matrimonial house without any valid reason.

5. The trial Court disbelieved the case of the appellant/husband as the same is without any proof and dismissed the petition by order dated 4.8.2000, and on appeal, in C.M.A.No.4 of 2002, the same was confirmed by decree and judgment dated 2.8.2001 of the learned Principal District Judge, Nagapattinam. Hence, this civil miscellaneous second appeal.

6. Mr.Amarnath, learned counsel for the appellant/husband was not ready and unfortunately, there was no representation on behalf of the respondent/wife also. Hence, I am constrained to go through the judgments of the Courts below.

7. This Court admitted the appeal on the following substantial question of law:
"Whether oral evidence of relatives and friends can be disregarded as interested testimony, particularly in matrimonial proceedings?"

8. A careful perusal of the judgments of the Courts below shows that the Courts below, rejected the evidence of P.W.2 as interested. In my considered opinion, assuming the testimony of P.W.2 is admissible, I doubt very much to what extent the same is going to help the appellant/husband, as the testimony of P.W.2 is also very vague and only depicts to the extent that the respondent/wife was not maintaining cordial relationship with the mother and sister of the appellant/ husband and his relatives, which, by itself, cannot be a ground to seek divorce.

9. With regard to the allegation of mental cruelty, the appellant/ husband had been subjected to by the respondent/wife, mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other, vide Parveen Mehta v. Inderjit Mehta, (2002) 5 SCC 706. But, in the instant case, the appellant/husband failed to prove the allegations of mental cruelty by the respondent/wife with any evidence.

10. On the other hand, the finding of the Courts below is that the wedding between the appellant and the respondent was arranged by elders and that too with the full consent of the appellant and the respondent. The respondent/wife has not averred anything about the black complexion of the appellant/husband and on the other hand, she was ready and willing to join the

appellant/husband at any time.

For all these reasons, finding no interference is required with the orders of the Courts below, the appeal is dismissed answering the substantial question of law accordingly. No costs.

Index :Yes
Internet:Yes

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To:
1. The Principal Subordinate Court
Myladuthurai.

2. The Principal District Court
Nagapattinam.